
Agency Information

AGENCY : SSCIA
RECORD NUMBER : 157-10014-10124

RECORD SERIES : MISCELLANEOUS RECORDS OF THE CHURCH COMMITTEE

AGENCY FILE NUMBER : 07-M-30

Document Information

ORIGINATOR : SSCIA
FROM :
TO :

TITLE :

DATE : 03/17/1976
PAGES : 58

SUBJECTS :
SSCSGO, METHODOLOGY
COMMITTEE BUSINESS

DOCUMENT TYPE : TRANSCRIPT
CLASSIFICATION : Declassified
RESTRICTIONS : 1B; 1C
CURRENT STATUS : Redact
DATE OF LAST REVIEW : 03/22/2000

OPENING CRITERIA :

COMMENTS : CCBOX 324

Released under the John
F. Kennedy
Assassination Records
Collection Act of 1992
(44 USC 2107 Note).
Case#:NW 53244 Date:
06-14-2017

JFK ASSASSINATION SYSTEM
IDENTIFICATION FORM

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DOCUMENT TYPE : TRANSCRIPT
CLASSIFICATION : TOP SECRET
RESTRICTIONS : REFERRED
CURRENT STATUS : POSTPONED IN FULL
DATE OF LAST REVIEW : 01/05/99
OPENING CRITERIA :
COMMENTS : CCBOX 324

[R] - ITEM IS RESTRICTED

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Vol. 2 OF 3

NATIONAL SECURITY INFORMATION
Unauthorized Disclosure Subject
to Criminal Sanctions

The United States Senate

R2804

Report of Proceedings

Hearing held before

Senate Select Committee to Study Governmental
Operations With Respect to Intelligence Activities

324-9

Wednesday, March 17, 1976

Washington, D. C.

(Stenotype Tape and Waste turned over
to the Committee for destruction)

WARD & PAUL

410 FIRST STREET, S. E.
WASHINGTON, D. C. 20003

(202) 544-6000

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COMMITTEE MEETING

- - -
Wednesday, March 17, 1976
- - -

United States Senate,
Select Committee to Study Governmental
Operations with Respect to
Intelligence Activities,
Washington, D. C.

The Committee met, pursuant to notice, at 10:30 o'clock
a.m., in Room S-407, the Capitol, the Honorable Frank Church
(Chairman of the Committee) presiding.

Present: Senators Church (presiding), Mondale, Huddleston,
Hart of Colorado, Tower, Baker, Mathias and Schweiker.

Also present: William G. Miller, Staff Director; Frederick
A. O. Schwarz, Jr., Chief Counsel; Curtis R. Smothers, Minority
Counsel; and Joseph diGenova, Pat Shea, Al Quanbeck, William
Bader, Rick Inderfurth, Elizabeth Culbreath, Michael Madican,
Joseph Dennin, Charles Lombard, Margaret Carpenter, Elliot
Maxwell, Walter Ricks, David Aaron, Jan Orloff, Rhett Dawson,
Bob Kelley, Anne Karalekas, Molly Dillon and Burt Wides.

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P R O C E E D I N G S

The Chairman. The Committee will come to order.

Our purpose this morning is to commence the consideration of the findings and recommendations on the foreign and military intelligence aspects of the investigation.

Knowing that members have read the Subcommittee's report, I suggest that we commence by simply asking if any Senator has any suggestions or amendment to propose to the general findings and conclusions which begin on page 1 and extend through page 5.

Senator Baker. Mr. Chairman, may I make a preliminary remark?

The Chairman. Yes, of course.

Senator Baker. I think that the Subcommittee has done a good job. There are a number of points that I would like to discuss. I think none of my concerns are irreconcilable. I think some of them are even as small as matters of language, but there is one that I have already mentioned to Mr. Miller and I do feel strong about, and that is if we are going to submit the set of recommendations to the agencies, particularly the CIA in this situation, that we do it before we take Committee action.

I am perfectly willing for that to be done as quickly and even as informally as possible, and Bill Miller suggests that he might be able to meet with Rogovin yet today and have some

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1 sort of reaction to it, if possible. But my concern, frankly,
2 Mr. Chairman, is that if there is going to be an Agency input,
3 that they have it, because I am called on to make any approval.

4 So with that understanding, I am prepared to go ahead.

5 The Chairman. All actions of the Committee will be taken
6 tentatively. I have discussed your proposal with Bill Miller
7 and he will take up these recommendations informally. He will
8 make a report back of the Committee's views -- of the Agency's
9 views or objections to any particular recommendations, so the
10 Committee can then consider that at the end of the road before
11 final vote and approval is taken.

12 Senator Baker. Do you plan to vote on each separate one
13 or just simply try to establish a verbal consensus, because
14 I would be -- I would not like to vote on the particular sections
15 until I hear what the agencies say.

16 The Chairman. Well, the vote is tentative. I see no
17 problem with it. We can always reconsider it if the Agency
18 offers a strong objection.

19 Senator Baker. Well, it is not quite the same, but if
20 you are going to go that way, I'm going to withhold my vote
21 until tomorrow, but if we want to discuss it separately and
22 arrive at a general consensus, that's a little different.

23 Senator Huddleston. I would just like to make this point,
24 Mr. Chairman, that each agency has had a considerable oppor-
25 tunity to make input, and has in fact made some input because

1 the witnesses have been questioned in many cases on specific
2 recommendations that we might make. So there has already been
3 that degree of input from the agencies.

4 The Chairman. I would hope that we could proceed so
5 that the Committee considers and at least comes to a tentative
6 vote. It is always subject to a final revision, and I think that
7 is the only way we really can make progress. But I will see
8 to it, Howard, that any objection the Agency may raise to any
9 of these recommendations, or any strong feelings they express
10 concerning any of them, are reported to the Committee by
11 Mr. Miller, and the Committee will have an opportunity, then,
12 to review its work in the light of any such evaluation.

13 Senator Baker. I thank you for that, Mr. Chairman. That
14 certainly is an improvement. That doesn't quite meet my
15 concerns, which were that we have the input from the CIA, the
16 White House and the Justice Department before we make any
17 Committee action, but I suspect that is as good as I can
18 probably do.

19 But it is understood, I suppose, that I may in fact
20 withhold my vote until we have heard a reaction, at least from
21 the results of Bill Miller's meetings.

22 The Chairman. I would hope that we could move along in
23 most cases by consensus, Howard, anyway. You know, we have
24 been able to do that most of the time, and we will come to
25 votes only in those cases where they are necessary.

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1 Fritz, may I ask before we proceed when you think you
2 will be ready with your final recommendations for consideration
3 by the Full Committee?

4 Senator Mondale. The 25th or 26th Mr. Schwarz tells me.

5 Mr. Schwarz. That is the day we are scheduled for, and
6 we are well on schedule.

7 The Chairman. Well, if they could be distributed to
8 members by the 24th.

9 Mr. Schwarz. Can do.

10 The Chairman. If you could do that, we could take that
11 up and we can work on them on the 25th.

12 Senator Mondale. I think we can just vote them out.

13 The Chairman. All right.

14 Now that Senator Tower has arrived, we will commence these
15 proceedings.

16 Calling the Committee's attention to the first section,
17 general findings and conclusions, running through pages 1 through
18 page 5, does any member of the Committee have any amendment to
19 offer or suggested change to make?

20 Senator Baker. Mr. Chairman, I have one on page 4.

21 The Chairman. On page 4?

22 Senator Baker. In the second paragraph, the third sen-
23 tence: "The recent proposals and executive actions by the
24 President are an important step in this process and a useful
25 point of departure. They are not, however, adequate in

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1 themselves."

2 It is my view that the President did a rather extraordinary
3 thing in making sweeping and comprehensive recommendations, and
4 it deserves probably better treatment from us than that. I
5 think it is likely that we will suggest and urge the enactment
6 of additional legislative steps, but I think this particular one
7 diminishes the importance of the President's recommendations
8 unduly.

9 The Chairman. Well, it says "The recent proposals and
10 executive actions by the President are an important step
11 in this process and a useful point of departure. They are
12 not, however, adequate in themselves." And it seems to me
13 that no executive action can be adequate in itself because it
14 is subject to immediate change, to change without notice, and
15 therefore is not a dependable standard, and I think this
16 Committee, in making recommendations that statutes be enacted,
17 is attempting to establish definite and dependable standards.

18 That is not to criticize the executive orders the President
19 himself has issued, but it is to suggest that they are not
20 adequate in themselves.

21 Senator Baker. I think that is the way it would be read,
22 though. This is what I had in mind when I said part of my
23 objections may in fact go to questions of style. I surely
24 doubt that the Committee tends to diminish the importance of
25 the President's suggestions. I would suggest that this style

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1 be changed simply by saying "These tasks are urgent. They should
2 be undertaken by Congress in consultation with the executive
3 branch in the coming year, and the President's significant
4 recommendations in this respect are most welcome."

5 The Chairman. All right.

6 That's all right.

7 Senator Baker. Thank you, sir.

8 The Chairman. But I think we should add the final
9 sense, "They are not, however, adequate in themselves."

10 Senator Baker. No, I don't want to do that. I think if
11 you want to put that sentence in, then I want to diddle with
12 that one a little bit.

13 I would recommend just leave that out. There is no need
14 to say that.

15 Senator Tower. Say, "However, other steps should be
16 taken."

17 The Chairman. Or we could say, "However, legislative
18 steps are also needed."

19 Senator Baker. Well, why not add "We especially note
20 the suggestion by the President that legislative action will
21 be required as well, and we agree with that."

22 Senator Huddleston. Well, I would just suggest, Mr.
23 Chairman, that if we are going to accept the President's
24 action as adequate, we can end the report right there on
25 page 4 and send it on down.

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1 Senator Baker. Well, nobody is suggesting that. I don't
2 suggest that.

3 Senator Huddleston. Well, why not say it?

4 Senator Baker. Because. Don't say either one.

5 Senator Huddleston. Because as a matter of fact the
6 steps are woefully inadequate, Senator, if you look at it.

7 Senator Baker. I don't think they are inadequate. I think
8 they are very good, indeed. I think there are a lot of things
9 I would add to it, but I don't like to be doing a thing to
10 aid the legislative process by saying that the President did
11 a good job or a bad job, and that is a question of style that
12 we are addressing.

13 Senator Mondale. Why don't we just agree that the
14 President did a job on this issue.

15 Senator Baker. Why don't we have a vote on it.

16 Why don't we just do that?

17 Senator Huddleston. Okay, but I don't really see any
18 criticism at all, here, of the President.

19 The Chairman. "It shall be undertaken by Congress in
20 consultation with the executive branch in the coming years."
21 And then what would you add to that, Howard?

22 Senator Baker. "The recent proposals and executive
23 actions by the" -- "The recent suggestions and proposals
24 by the President in that respect are most welcome," and I am
25 proposing we stop there.

1 The Chairman. Then I would say we add "They are not,
2 however, sufficient in themselves."

3 Senator Schweiker. How about, "But further action by
4 Congress is necessary." Wouldn't that get us over the hump
5 here?

6 The Chairman. All right.

7 Senator Mondale. Clearly necessary.

8 Senator Baker. How about putting, "And as the President
9 indicated, further action by Congress is also needed."

10 Senator Mondale. Wait a minute.

11 The Chairman. After all, Howard --

12 Senator Mondale. Let's not be political here.

13 The Chairman. You've gotten enough out of that, Howard.

14 Senator Mondale. We'll call the President and say you're
15 working like hell.

16 Senator Baker. The only right I've got is to vote or to
17 note vote, and to make a separate statement.

18 Now, seriously, boys, we need to just decide what we are
19 going to do, and I propose that we just stop it after that
20 statement, that the recent proposals by the President in that
21 respect are most welcome, and then what Schweiker said, whether

22 Congressional initiative is required.

23 The Chairman. What did you say?

24 Senator Schweiker. After his I said, "but further action
25 by Congress is necessary," which I think says that we've got a

1 job to do.

2 The Chairman. All right, we will adopt Howard's first
3 sentence and Schweiker's second sentence on that.

4 Senator Huddleston. The Baker-Schweiker amendment.

5 The Chairman. All right.

6 Are there any other proposals to be made in connection with
7 this section?

8 Senator Tower. Yes, page 5, Mr. Chairman, the last
9 sentence in the first paragraph, "The Committee believes that
10 covert action must be employed only in the most extraordinary
11 circumstances."

12 What are extraordinary circumstances?

13 The Chairman. Well, they are extraordinary. That's a
14 good word.

15 Senator Huddleston. I'm sorry. What page are we?

16 Senator Tower. Page 5.

17 The Chairman. Last sentence on page 5, "The Committee
18 believes that covert action must be employed only in the most
19 extraordinary circumstances."

20 Senator Tower. I think probably on the Committee there
21 are varying degrees of support or opposition to this whole
22 idea of covert action anyway. I happen to believe in it
23 pretty strongly. I respect the views of those who don't think
24 we should use it at all. That is a policy matter.

25 Mr. Miller. I think the idea that was intended there,

1 Senator, was that it is a technique that should be used when
2 overt means have been exhausted and it is the only way to
3 achieve your goals.

4 The Chairman. In other words, extraordinary is the opposite
5 of ordinary. We could say the Committee believes -- you could
6 turn that around and say the Committee does not believe that
7 covert action should be employed in ordinary circumstances, but
8 this is a positive way of saying it.

9 Senator Tower. Well, my view is that extraordinary
10 circumstances is when there is imminent threat of the Soviet
11 invasion of a small country, for example, or a European country.

12 Senator Huddleston. That is a good enough example for
13 me.

14 The Chairman. Well, I think we don't define it, and since
15 we don't attempt to define it more precisely, I don't see
16 any problem with it. You and I might have a different notion
17 of what constituted an extraordinary circumstance.

18 Mr. Miller. That is the Agency's view.

19 Senator Huddleston. Mr. Chairman, we also have further
20 reports and recommendations where we can get into that matter
21 in substance, whether or not the Committee wants to -- we
22 didn't resolve it at the Subcommittee level -- but whether and
23 to what extent the Committee wants to impose some kind of
24 restriction on covert action, I think there is a better place
25 than dealing with it that specifically here. I think we

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1 just want to indicate here that something that is somewhat
2 of a usual and everyday operation --

3 Senator Baker. Excuse me, John. I am not sure I would
4 like to leave it that way. I think we are touching now one of
5 the vitals of this whole thing, and frankly I don't know what
6 I think about it.

7 I do know that my general feeling is that there is a need,
8 certainly a conceivable need for some sort of covert capability
9 action. I know that in my view it has been abused in the
10 past, but I think that abuse is just one of neglect as
11 anything else, and that is in anyone neglecting to watch what
12 was going on.

13 My own personal view is that rather than restrict the
14 scope of action, the scope of covert action, that there ought
15 to be an escalating requirement for accountability reaching
16 to the President himself, in the case of any significant
17 kind of covert action. I know that I would like to have
18 the Agency's comments on this point in particular, and I
19 would withhold my vote until Bill Miller has his meeting.

20 Senator Mondale. To me this is a pretty central point.

21 Senator Baker. It is.

22 Senator Mondale. And it is hard to define a standard
23 that is mechanical, and we all accept that, that what this
24 word means is that in effect we think covert action has been
25 used in too many circumstances and unwisely frequently in the

1 past, and we would like to say that much more caution and
2 restraint should be applied in its exercise in the future, and
3 I know there are some who think there should be no covert
4 action. I am not willing to walk that line.

5 Senator Baker. I think I would take what you just said.

6 The Chairman. Well, why don't we go to the statute by
7 which Congress has already enacted into law the test, which
8 is a hell of a lot stronger than "extraordinary," for
9 Christ's sake.

10 Senator Mondale. Is that the Hughes Act? What does it
11 say?

12 The Chairman. It says when the President determines
13 that the national security is imperiled -- what is the Hughes
14 language?

15 Mr. Aaron. The Hughes language is that unless there --
16 well, no funds be appropriated, et cetera, unless and until
17 the President finds that such operation is important to the
18 national security and the scope of such operation, and so forth
19 and so forth.

20 Senator Mondale. No, I think this "extraordinary" is
21 better.

22 The Chairman. Well, I agree that that's kind of weak. I
23 remembered it differently.

24 Senator Baker. Well, I disagree. I think this is
25 pretty clearly in accord with what I just said. That is, it

1 isn't a question of whether you ought to restrict covert
2 activity or not. We should rather escalate the level of
3 responsibility to the point where if you are going to use
4 significant covert action, it requires direct and express
5 written approval of the President of the United States, and
6 that is, in effect, what Hughes said.

7 The Chairman. Well, we do have that in the recommendations,
8 but even the Agency, even the Agency that we are supposedly
9 investigating has not argued, to my knowledge, that covert
10 actions ought not to be restricted to extraordinary situations.

11 Mr. Miller. That is correct.

12 The Chairman. And why we cannot say what the basic --
13 the Agency itself basically agrees with -- I personally think
14 that these covert operations have been a national catastrophe
15 for the United States, and I think the last 25 years is damned
16 good evidence of just what has happened to us by your notion
17 that we have to imitate the Russians in the treatment of
18 foreign people and adopt their methods and techniques. I am
19 against it, and I will say so in a separate, personal statement.

20 But I should think that at least the Committee would be
21 willing to say that covert operations ought not to be taken
22 in ordinary circumstances, and that is what this sentence
23 says.

24 Senator Tower. May I suggest this, Mr. Chairman, if we
25

1 repair to Dee's original recommendations in that we take
2 up this matter later on, that we reserve the right to return
3 to this after we have taken up the other aspect of it later
4 on..

5 Senator Baker. That is all right with me.

6 The Chairman. All right, we can do that. Tentatively we
7 will pass over it.

8 Senator Baker. So tentatively we are going to pass over
9 it.

10 The Chairman. Yes.

11 And I think we have got to make some -- let's take our
12 decisions, as I indicated to start with, and I would like
13 to hold the roll, let's take our decisions tentatively, but
14 let's make them. It is always open --

15 Senator Tower. With the understanding that we can
16 reconsider it.

17 The Chairman. Yes, that's right.

18 Senator Tower. That's okay.

19 The Chairman. All those in favor of leaving this sentence
20 as it presently stands, raise their right hands.

21 Senator Tower. Why don't we just leave it and not raise
22 the issue of striking it, but with the right to come back to
23 it.

24 Senator Baker. Well, I don't want to quarrel with my leader
25 but I am about to.

1 Senator Tower. Who is your leader?

2 Senator Baker. Well, you are running for it.

3 I was just trying to get your attention.

4 Senator Hart of Colorado. Please, boys, not here.

5 Senator Baker. But I would be prepared to pass this, in
6 my view, until the Agency has a chance to respond through
7 the Miller-Rogovin route. My preference is not to tentatively
8 or otherwise approve it or disapprove it, but if we are going
9 to put the question I am going to vote against it or not
10 vote.

11 Senator Hart of Colorado. There's no motion to strike.
12 Let's adopt the Tower position.

13 Senator Tower. I just want to be able to come back to it-
14 and then revise it if we feel like we want to.

15 The Chairman. It is always open to the Committee to do
16 that.

17 Senator Tower. I see. No vote is required.

18 The Chairman. All right.

19 Then the language stands as it is, subject to the right
20 of the Committee to return to it at a later date.

21 Senator Tower. I have got another one.

22 The Chairman. On page 5?

23 Senator Tower. Yes.

24 "The Committee finds that the Constitution requires public
25 disclosure and public authorization for an annual aggregate

1 for United States national intelligence activities."

2 Would Counsel give me the appropriate Constitutional
3 mandate on that?

4 Mr. Aaron. I would like to turn to Elliot, who has done
5 the essential analytical work on it.

6 Mr. Maxwell. Article 1, Section 9, Clause 7 provides that
7 "No money shall be drawn from the Treasury, but in consequence of
8 appropriations made by law; and a regular statement and account
9 of the receipts and expenditures of all public money shall
10 be published from time to time."

11 Since the establishment of the CIA, NSA, DIA and particularl
12 NSA and CIA, there has been no publication of the funds
13 appropriated to those agencies, and the paradox has been that
14 accounts in the Defense Department budget have been increased
15 by the amount which would then go to CIA and to NSA. Those
16 funds have been voted by Congress as a whole, but without
17 any knowledge on the part of Congress as a whole that those
18 funds were going to NSA, CIA or the national programs of the
19 Defense Department.

20 We have taken a considerable amount of testimony as
21 to the effect of the publication of the aggregate figure, and
22 both -- all of the DCI's that we have taken testimony from
23 have indicated that publication of a total figure would not
24 jeopardize national security and objected to it primarily on
25 the grounds that if that figure were published there would be

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1 a greater press for detail in regard to other activities, but
2 the constitutional analysis essentially is that unless there is
3 a countervailing constitutional interest, i.e., national
4 security, that would prevent publication, then there is a
5 constitutional obligation to publish.

6 Senator Tower. Well, actually, how do you arrive at an
7 aggregate figure for national intelligence activities when you
8 have got them ongoing in many, many agencies of one kind or
9 another.

10 The Chairman. With the establishment of an oversight
11 committee, we are recommending that all of that will be brought
12 together and an aggregate figure can be presented to the
13 Congress when the authorization bill comes up, just the way
14 the Joint Committee on Atomic Energy presents a figure, and
15 the Constitution will then be complied with.

16 Senator Huddleston. We had a very excellent presentation
17 on the budget of the intelligence community before our
18 Committee or Subcommittee. I assume it has been reduced to
19 writing and is in some form that would be available to the
20 Committee.

21 And the figure that we anticipate as an aggregate figure
22 is still not near the total figure that can be at least
23 ascribed to intelligence in some manner, but is one that, as
24 the Chairman has pointed out, there have been indications by
25 people involved that it would not pose any great problem.

1 Senator Mondale. If you put out the aggregate figure.
2 What would the aggregate figure be now, approximately?
3 What would it be?

4 Senator Huddleston. This figure we are talking about is
5 only about \$4.7 billion.

6 Mr. Maxwell. The CIA has defined it, as the DCI makes
7 the presentation, he has defined the National Intelligence
8 program figure as approximately \$4.7 billion a year.

9 Mr. Aaron. It would consist of the budgets of CIA,
10 NSA, DIA, and of the National Reconnaissance program.

11 Senator Tower. It would not include the FBI and its
12 counterintelligence program.

13 Mr. Aaron. Well, that is an issue for your oversight
14 committee. Those are small amounts of money, and one can
15 include the INR, which is \$10 million.

16 The Chairman. John, that could be included in, under the
17 proposed oversight committee, the intelligence, the State
18 Department intelligence is included in the authorization.

19 Senator Schweiker. Well, the House figure came up with
20 \$10 billion. Where are we off \$6 billion?

21 Senator Huddleston. That is for a lot of support activity
22 that you couldn't necessarily eliminate. If you eliminated
23 intelligence you'd still have to have a part of that activity.

24 Mr. Maxwell. And it includes tactical.

25 The Chairman. Gentlemen, what are -- let's not get into

1 a long discussion of what the figure is. What we are recommending
2 is that the aggregate figure be published, and that in the
3 future, the oversight committee establish the aggregate
4 figure in the appropriate way, and that it be made known to
5 the Congress when the Congress approves the authorization
6 bills.

7 Senator Mondale. Public disclosure, too.

8 The Chairman. Right, with the public disclosure, and that
9 is really the policy matter that is before us rather than the
10 discussion of whether the figure is \$4.1 billion or \$10 billion,
11 and depending on how it is broken down and how future committees
12 act upon it, but it is the policy question that prevails.

13 Senator Mondale. Does this approach meet the constitutional
14 standard?

15 Mr. Schwarz. In my judgment it does not. It is not
16 sufficient to put only the aggregate figure out, but the problem
17 is, understanding the conversation with Bill yesterday, that
18 the record of the Committee does not perhaps go quite far
19 enough to iron out the national security implications of going
20 beyond the aggregate figure. There may be a way of resolving
21 that tension between what the Constitution apparently requires
22 and the record of the Committee, would be to say something like
23 as a matter of principle the Committee believes the
24 Constitution requires disclosures beyond the aggregate figure,
25 but the oversight committee should hold hearings on the argument

1 against doing that to see if there is a convincing case on
2 national security grounds to go the other way.

3 But really, the Constitution is not going to be satisfied
4 by an aggregate figure which lumps together a lot of agencies.

5 The Chairman. But you see, what we do here in this
6 report, gentlemen, is we take the first step of publishing an
7 aggregate figure. It has not been done before. Then we
8 recommend that the oversight committee in the future not only
9 repeat that process, but examine the extent to which a more
10 detailed figure could be presented, breaking down the various
11 components in conformity with the necessary national security
12 considerations.

13 So we leave that properly, I think, to the oversight
14 committee that will exercise jurisdiction, now, on the issue.
15 We break the ground, we make the recommendation, and I think
16 it moves toward the satisfaction of the constitutional require-
17 ment. So for that reason I would hope that we could just
18 leave the sentence the way it is.

19 Senator Huddleston. The sentence to be accepted would
20 be more accurate to say that the Constitution requires at
21 least the public disclosure of an aggregate figure.

22 Senator Tower. In fact, we tend to disclose aggregate
23 figures rather than line items anyway. You don't bother with
24 every nut and bolt you buy off the shelf.

25 The Chairman. Yes.

1 Why can't we adopt this suggestion and say the Committee
2 finds that the Constitution at least requires public disclosure
3 and public authorization for an annual aggregate figure of --
4 for the United States National Intelligence activity, and then
5 later on, the permanent committee can look at that matter
6 further and see the extent to which --

7 Mr. Schwarz. And you do discuss that later on.

8 The Chairman. We discuss it later on.

9 Senator Baker. Could I make one minor suggestion?

10 Although the issue presents substantial constitutional questions
11 and requires further thought in general, which we hope the
12 oversight committee, if created, will give it, we recommend
13 on the basis of the present record that -- and then go ahead.

14 All I want to do is signal to the permanent committee
15 that we are still troubled by this, we would like to take a
16 look at it.

17 The Chairman. Howard, we do that later in the report, do
18 we not?

19 Senator Huddleston. We might flag that.

20 The Chairman. This is just a summary of our findings.

21 Senator Baker. But if they are going to be published in
22 this form, I would like that flagged, you know, so the people
23 can understand.

24 The Chairman. Well, I don't see any objection to that.

25 Senator Baker. I don't think it'd change it.

1 The Chairman. Well, why don't we say this --

2 Senator Huddleston. Constitutional and security problems.

3 Senator Baker. That's better.

4 The Chairman. Why don't you make that just a short opening
5 phrase on that sentence, and then say "The Committee finds
6 that the Constitution at least requires public disclosure and
7 public authorization of the annual aggregate figure."

8 Senator Baker. All right, or "is of the opinion."

9 Mr. Aaron. I am not too sure what the fragment is that
10 will precede the sentence.

11 Mr. Schwarz. You're saying that there is a tension
12 between the Constitution and national security, just an
13 announcement of the --

14 The Chairman. Howard, how did you put it?

15 Senator Baker. "Although there are substantial
16 Constitutional and security issues unresolved, the Committee is
17 of the opinion that" --

18 The Chairman. Unresolved as to the extent to which
19 the figures should be revealed, the Committee at least believes
20 that an aggregate figure is required by the Constitution.

21 Senator Baker. And if it can be done without being
22 too awkward, I would say "and to which we invite the attention
23 of any future permanent committee."

24 The Chairman. All right.

25 Well, no, I think that should come here, too, because that

1 puts it all together in one place.

2 Why can't -- well, let's have an understanding with the
3 staff that that provisions be rewritten in accordance with
4 Senator Baker's suggestion so that it says three things: one,
5 that there are or there is a question as to the extent to which
6 the Constitution requires it, an unresolved question as to
7 the extent to which the Constitution requires the publication
8 of, how much publication of figures; and that this is a matter
9 that we would call to the attention of the permanent committee
10 to settle. Nevertheless, the Committee believes that the
11 Constitution clearly requires or at least requires the publi-
12 cation of an aggregate figure, and then the rest of the
13 paragraph.

14 Is that all right?

15 Senator Baker. All right.

16 The Chairman. Does that satisfy you, Senator Baker?

17 Okay.

18 Senator Tower. Could I ask one question of counsel?

19 The Chairman. Mr. Maxwell?

20 Senator Tower. Has there been an adequate court test
21 of this issue?

22 Mr. Maxwell. No. The courts have found in the only
23 tests that have come to it that the plaintiff did not have
24 standing. There is another test case coming now in which the
25 issue is the publication of the CIA budget, the aggregate CIA

1 budget. It was filed about six months ago, and there has been
2 a substantial amount of material produced in conjunction with
3 the case. There is a longer piece that would be part of the
4 Foreign and Military Subcommittee report which deals with that
5 case and with the deposition of Mr. Colby in connection with
6 it, and his views on disclosure of the aggregate budget, but
7 there has been no court case because of standing problems.

8 Mr. Schwarz. It is basically political problems. The
9 language of the Constitution seems to lodge with the Congress
10 the issue.

11 The Chairman. All right.

12 Can we then turn to page 6, the 1947 National Security
13 Act and related legislation.

14 I have some stylistic changes that I will give to the
15 staff. They are purely stylistic, on page 6.

16 Is there any suggestion for changes on page 6, I mean
17 substantive changes.

18 Senator Mondale. We have two suggestions that would, I
19 think, bring the Domestic and the Foreign and Military
20 Subcommittees recommendations together. One on
21 the bottom of the first paragraph on page 7, at the end
22 of the first paragraph you would say "Recommendations of the
23 Committee which are intended to protect the rights and
24 liberties of Americans have been set forth in the Committee's
25 domestic recommendations," so it just refers to that.

1 The Chairman. Do you add that? Where?

2 Senator Mondale. Just add that as an additional sentence
3 after "order."

4 And then on page 8, following the sentence on Item 4, you
5 would say "These have been spelled out in the recommendations
6 of the Domestic Section of the Report." That way they track.

7 Mr. Aaron. May I just make a point in regard to 4?

8 You will have to sharpen that to say those that affect
9 the domestic aspects, because there are other limitations that
10 are proposed, and it goes to 4.

11 Senator Mondale. That's all right. This is just
12 stylistic, to make it track.

13 The Chairman. All right.

14 I believe my changes here are all stylistic. I just
15 called them to the attention of the staff.

16 Any other suggestions here?

17 If not, can we go to Section 3, beginning on page 9?

18 Mr. Miller. There is one small point on the word
19 "mechanism," and we need a bit of expansion, but it is the
20 idea of the degree of control and accountability.

21 Mr. Smothers. Well, there is something here that appears
22 to be out of order. What appears here at page 120 at D
23 probably should come up to page 8 because we are talking
24 about the Act, on the secrecy and authorized disclosure. To
25 make this track, since we are making the recommendations on

1 the act here on page 8, it appears to me that D should come
2 up to join that as a No. 5, the substance of what it says, and
3 that we may have to work with it.

4 Mr. Miller. Well, understand that the recasting, it is
5 only that portion of the 1947 act which affects intelligence.
6 Most of the National Security Act affects the organization
7 of the Defense Department.

8 Mr. Smothers. But on the secrecy disclosure, it appears
9 that what we have at 120 would track that, and since we are
10 talking about the act here early on on page 8, we have -- we
11 would add this 5 early on and pick up what is at D on 120.

12 Senator Mondale. Mr. Chairman?

13 Senator Huddleston. I think Bill Miller's point was
14 that the recommendation, beginning on page 13, refer only
15 to the National Security Council portion of the Act. This
16 section would refer to any secrets in the intelligence community
17 as I understand it.

18 Senator Mondale. And I was wondering if for that reason
19 we could hold it until the last, because the Domestic
20 Committee will be interested in this, too.

21 The Chairman. But this is a matter that relates
22 directly to the liberties of individual Americans. Any kind
23 of a secrecy act that imposes criminal penalties goes to the
24 heart of the question of individual liberties, and I think in
25 accordance with the decision reached yesterday, matters of

1 this kind should be taken up when we consider the domestic
2 reports, that we consider them together.

3 Mr. Smothers. I am not necessarily endorsing them, Mr.
4 Chairman. What we are saying, apparently, however, is here
5 are defects in the '47 Act in terms of flagging these big
6 ones. I don't see that it is inconsistent with, if we arrive
7 at the use of a secrecy provision, that further discussion of
8 that later, but that we are going to flag it because it appears
9 to be a point.

10 Mr. Schwarz. As an organizational as opposed to a sub-
11 stantive point.

12 The Chairman. Organizationally, yes, I agree with that,
13 but let us simply flag it here, and then when we reach our
14 decision at the proper time, we will insert whatever that decision
15 is.

16 Mr. Smothers. Thank you, Mr. Chairman.

17 The Chairman. All right, let's go on into 9.

18 Any proposed changes on page 9?

19 (Pause)

20 The Chairman. I have one question on page 9. When you
21 get down to, in the second paragraph on the bottom where it
22 says "The National Security Council's principal vehicle for
23 dealing with clandestine activities, the 40 Committee and its
24 predecessors, were not only a mechanism for reviewing and
25 making recommendations with regard to the approval of covert

1 action projects, but served until 1974 to insulate the President
2 from apparent involvement in the approval process." And then
3 you've got an asteris, on 1974, and then down at the bottom
4 you have "Cite and explain Hughes-Ryan Amendment."

5 I didn't quite understand the relationship of the Hughes-
6 Ryan Amendment to the insulation of the President from the
7 approval.

8 Mr. Aaron. The Hughes-Ryan Amendment requires a President
9 to certify.

10 The Chairman. I understand that.

11 Senator Mondale. And we don't change that.

12 Mr. Aaron. And we don't change that. It just means that
13 from then on his deniability was gone.

14 → Mr. Miller. You might add one word and say "apparent
15 involvement and accountability."

16 → Senator Schweiker. And requires reporting.

17 The Chairman. Well, all of that can be explained in the
18 footnote. I just needed that explained to me. It's all right,
19 I understand it now.

20 Any proposed changes on page 10?

21 Senator Baker. Mr. Chairman.

22 The Chairman. Yes, Senator Baker.

23 Senator Baker. I don't think so. I was about to suggest
24 that we cast this page mostly in the past tense, in view
25 of the apparent effort by the White House now to upgrade the

1 staffing and skills for the group at the White House, but
2 that is important enough to go into this section.

3 The Chairman. I have a couple of stylistic changes just
4 for clarification. I have nothing substantive.

5 Do the members have any recommendations or amendments to
6 offer on page 10?

7 (Pause)

8 The Chairman. If not, let's move on to page 11.

9 (Pause)

10 The Chairman. Do the members have any proposals or
11 changes to make on page 11?

12 Mr. Schwarz. Just one minor thing, the "or directed to
13 United States citizens," relates to some of the things that
14 we are going to table there, domestic counterintelligence, but
15 it is just a parenthetical. There are later some recommen-
16 dations that we would propose to table.

17 The Chairman. But you have no objection to this.

18 Mr. Schwarz. No, this is just a statement of fact.

19 The Chairman. Very well. Let's turn to page 12,

20 Senator Baker. I have one here, Mr. Chairman.

21 The Chairman. All right.

22 Senator Baker. The same thing before. I think you are
23 taking a shot at the President in the language there and I
24 don't think it's necessary.

25 The Chairman. Where?

1 Senator Baker. "The language of the Presidential order is
2 ambiguous," and, "'Manage' and 'coordinate' are inherently slip-
3 pery." Now, surely you can say it better than that. Even if
4 you disagree with it, you don't have to use that language.

5 I don't want to even put in "ambiguous."

6 Senator Mondale. You can say "manage and coordinate are
7 general words."

8 Senator Baker. Requireing further inquiry and definition.

9 The Chairman. Are --

10 Senator Hart of Colorado. Are vague.

11 The Chairman. Are vauge words.

12 Senator Baker. I like "general" better.

13 Senator Tower. I always thought that "manage" is a
14 slippery word.

15 The Chairman. We're taking out slippery words. We
16 are taking out instead of inherently slippery, we are putting
17 in vague.

18 Senator Baker. Well, what do we have?

19 The Chairman. "Manage and coordinate are vague words
20 and have proven to be so in matters of intelligence. Questions
21 remain about the operation of the CFI and its relation to the
22 current responsibilities of the DCI," and so forth.

23 They are vague words.

24 Senator Baker. Well, I think that carries an implication of sorts.
25 Why don't we say "general in nature?" Humor me a little.

1 The Chairman. All right.

2 All right, "manage and coordinate are"--

3 Mr. Smothers. -- "terms which are inherently general
4 in nature."

5 The Chairman. All right, "terms inherently general in
6 nature."

7 Senator Baker. All right.

8 The Chairman. All right.

9 Senator Baker. What are we doing about the "ambiguous?"

10 The Chairman. The way we have it now, "However, the
11 language of the Presidential order is ambiguous and much will
12 depend on how it is in fact implemented. 'Manage' and
13 'coordinate ' are terms inherently general in nature."

14 The two sentences go properly together.

15 Senator Baker. I don't think "ambiguous" could be
16 uncertain. I think "ambiguous" implies conflicts.

17 Mr. Schwarz. How about saying, "whose meaning depends
18 on their application."

19 The Chairman. Well, make that a whole sentence.

20 Mr. Schwarz. "Are general words whose meaning" --

21 Senator Baker. We are up to ambiguous.

22 The Chairman. "However, the language of the Presidential
23 order -- "

24 Mr. Aaron. "Is such that much will depend on how it is
25 interpreted."

1 Senator Huddleston. Does anybody want to object to the
2 word "commended" there?

3 Senator Baker. I hadn't planned on it.

4 The Chairman. "Is such that much will depend on how it is
5 in fact implemented," and then we will go on as agreed.

6 Anything else on this page?

7 Then let's turn to page 13.

8 Do the members have any recommendations or suggestions on
9 page 13?

10 I have a number of stylistic changes.

11 Senator Baker. Charlie brings out the question on page
12 12 of what "kitchen cabinet" means. I guess we all agree it
13 means an unofficial group of advisors who confer with the
14 President from time to time, sometimes in the kitchen.

15 Is that what we are talking about?

16 The Chairman. You know what kitchen cabinet means.

17 Senator Baker. I know what kitchen cabinet means. I just
18 wanted to make sure you have the same understanding.

19 The Chairman. All right.

20 If there are no suggestions for changes on page 13,
21 let's turn to page 14.

22 Senator Mondale. I would like to add at the end of
23 Recommendation 6 the following language: "The Attorney
24 General, as the Committee set forth in its domestic recommen-
25 dations, should have ultimate responsibility for ensuring that

1 such actions taken within the United States or affecting U.S.
2 citizens comply with the Constitution and laws of the United
3 States. As to all other matters, he shall function as an
4 advisor to the NSC on questions of law."

5 The Chairman. That appeals to me.

6 Senator Baker. Where are you putting that?

7 Senator Mondale. That would be the last, following 6.

8 Mr. diGenova. Do you want to strike the last part of the
9 sentence that's already there that says he's there to protect
10 the Constitution?

11 Mr. Schwarz. No, this is to add to that. The theory
12 is under our recommendations he is given new and greater
13 responsibilities to make sure that happens.

14 Mr. diGenova. Well, it already exists. That is what it
15 says.

16 Mr. Inderfurth. He is to be made an advisor under that?

17 Mr. Schwarz. It is to make sure that he doesn't function
18 solely as an advisor.

19 The Chairman. The importance of Senator Mondal's
20 suggestion is that he would serve as an advisor in matters other
21 than the treatment given to American citizens within the
22 United States, in which case he would be the final authority
23 as to its constitutionality.

24 Senator Mondale. That is correct except that it would
25 also involve the treatment accorded to U.S. citizens abroad.

1 The Chairman. Well, the Constitution extends to them
2 abroad. I think it is a very good addition.

3 Is there any objection to it?

4 Without objection, it is adopted.

5 Is there any other suggestion on this page? If not,
6 let's go to page 15.

7 Senator Schweiker. The only question I have on 15, and
8 I don't feel strongly about it, is does the Director of OMB
9 really belong on that Committee, and what is the reason for
10 putting him on there?

11 Mr. Aaron. Well, let me say first of all the President
12 has now placed the Director of OMB on that Committee as an
13 observer and our discussions with OMB I think indicated that
14 that was a helpful thing. I might ask Rick to speak to it.

15 Mr. Inderfurth. The financial considerations are apparent.
16 That is one reason he is placed on it.

17 Senator Schweiker. He is on there now?

18 Mr. Inderfurth. Yes, he is being placed on there by
19 Executive Order.

20 Senator Schweiker. Well, then, I have no problem.

21 Mr. Inderfurth. Also, there is one other thing. You
22 get an outside observer, somebody not involved day to day in
23 clandestine activities, and that should be a healthy
24 addition. That's why he was placed on.

25 Senator Baker. Mr. Chairman, I have a general question.

1 We know what the situation is. Now we have a pretty good
2 idea what it has been in the last two decades, but we ought to
3 think about how much we are restricting the actions of the
4 future Presidents. Presidents traditionally have changed these
5 groups. Kennedy, for instance, brought his brother in,
6 obviously because he trusted him and knew his brother and
7 didn't have to get acquainted with somebody else, and I
8 wonder if by statute we aren't severely limiting the flexi-
9 bility of future chief executives by designating so many to
10 constitute. And later on, for instance, we say down here
11 the Chairman of the group shall be the Administration
12 spokesman.

13 Senator Hart of Colorado. Are you worried that too many
14 people are on there, or that he can't add others?

15 Senator Baker. That he cannot add others -- well, both
16 things.

17 Senator Hart of Colorado. But the recommendation doesn't
18 prohibit him.

19 Senator Baker. I suppose not, but you are going to get
20 a pretty good sized crowd.

21 One thing I might say in context while we are discussing
22 this, the question of Senate confirmation. We are also digging
23 down pretty deep into the bark, into the number of people
24 we are proposing to be confirmed,

25 Senator Hart of Colorado. He has already proposed that

1 though, hasn't he?

2 Senator Baker. The President, yes, but I don't agree with
3 it.

4 The Chairman. Well, when you consider this as a group,
5 Howard, as I understand it that would replace the 40 Committee
6 in that function. If you are going to undertake to subvert
7 foreign governments and spread false propaganda, and bribe
8 and coerce and abduct and do those things that are now thought
9 to be necessary and proper for this country, this group is
10 pretty important in deciding how far we go in matching the
11 Russians from place to place.

12 So I would think that we ought to have it established
13 by statute, and that they ought to be subject to confirmation
14 in this role.

15 I take it that the President could add additional
16 members if he felt the need to do so, so his hands are not
17 really bound in that respect. As Kennedy added his brother,
18 future Presidents could add to the membership, and the
19 President designates the Chairman.

20 Senator Schweiker. I think one of the problems, Howard,
21 has been we don't have management prerogatives defined and
22 pinned down in a stable way, and be able to move them around,
23 whether it is your brother or the Attorney General or his
24 campaign manager, etc. This is where you get the problems that
25 creep in there.

1 I would like to see them institutionalize responsibility
2 on something as critical as that, and it seems to me the
3 Secretary of State and Defense, etc. ought to be in there for
4 institutional balance. I'm more concerned about them playing
5 a shell game, and as long as they can add to it, it gives them
6 flexibility.

7 But it seems to me that we are asking for management
8 indiscretions and for abuses by not having a straight flow
9 line of command, of responsibility.

10 Senator Baker. I don't think it makes a lot of difference
11 because I'll bet you that whoever occupies that office will
12 either use or not use that board, depending upon his
13 preference or hers as President, and if they don't like it,
14 they will set up some informal kitchen cabinet to operate.

15 So I don't think it makes much difference, but I think
16 we are getting awful rigid in saying who is going to be on
17 it, but I won't press the point. But I do want to press the
18 point about Senate confirmation.

19 The Chairman. Senator Hart.

20 Senator Hart of Colorado. As I recall, that missile crisis
21 group was completely ad hoc, and whether he was adding to
22 or subtracting from or just putting a bunch of people together,
23 as I recall, some people from even outside of the government,
24 and I don't think the statutes or recommendations would prohibit
25 that from happening. I think this is a very crucial

1 recommendation because it directly confronts, let's say,
2 secrecy with accountability, and obviously the fewer people
3 who are on a key thing, the better at keeping it secret.

4 On the other hand, the fewer the people, the better the
5 chance of avoiding accountability.

6 Senator Baker. I agree with you, but the way I have met
7 that threat is to suggest that every significant action that
8 must be taken in this field should be a decision of record, so
9 it is retrievable, it can be found, it is in writing.

10 Senator Huddleston. That is a recommendation that occurs
11 later.

12 The Chairman. Well, now, we have an option. We were
13 originally given an option by the staff on Item No. 10 on
14 page 15, in which two recommendations were made. One was
15 that the Secretary of State should be designated as the
16 Administration spokesman for the Congress on the policy and
17 purpose underlying covert action projects. The revised
18 recommendation is that the Chairman of the group should be
19 designated as the Administration spokesman.

20 Senator Baker. My recommendation is that you let the
21 President decide that.

22 Senator Huddleston. I was about to make that recommenda-
23 tion, too.

24 The Chairman. Well, considering the members of the
25 group, do we invite the problem of executive privilege? If he

1 were to designate say his assistant, you see, the Assistant to
2 President for National Security Affairs is the President's
3 own man and in years past, we've known from painful experience
4 on the Foreign Relations Committee, we could not get him to
5 tell us anything. The only way we could do it was to have
6 a little informal party around Bill Fulbright's fireplace, and
7 after about three rounds of sherry, he would let us in on a
8 little inside information that he thought would mollify us
9 and not tell us too much. And the only one we could get to
10 come to the Committee on the ground of Congress's own right
11 to demand an accounting was the Secretary of State, because
12 he was a cabinet officer. He was not a personal lieutenant
13 on the President's own cadre, and therefore could not invoke
14 executive privilege as an excuse for not appearing.

15 Senator Mondale. And he now says he was not told about
16 this covert activity, he was kept out of the group probably
17 because of that.

18 The Chairman. Well, I think if we recommend who the
19 group should consist of, the group has charge of covert
20 activity, we should designate, or we should recommend also
21 that the Secretary of States be the spokesman for the Congress,
22 or otherwise you are inviting the same problems that I have
23 lived with for years, and I just throw that experience out
24 as a red flag.

25 Mr. Inderfurth. Recommendation 9, saying that if the

1 President did appoint his Assistant for National Security
2 Affairs as Chairman, Recommendation 9 would make him subject to
3 Senate confirmation for that purpose.

4 The Chairman. But confirmation alone does not necessarily
5 remove the easy application of executive privilege for anyone
6 who just sits in the White House as a Presidential lieutenant.

7 Senator Baker. To be lawyer-like, neither does cabinet
8 officer guarantee that he is not available for the President
9 can always call him, a cabinet officer serving in his capacity
10 as assistant to the President.

11 The Chairman. I know, but tradition stands on the
12 side of cabinet members appearing, because it has always been
13 so, and they don't come so easily within that cloak as
14 anybody who is a special assistant to the President himself.

15 Senator Huddleston. Well, now, we do give the President --
16 he does designate the Chairman of this group. So in effect he
17 is designating the spokesman.

18 The Chairman. Sure. But if he designates the Assistant
19 to the President for National Security Affairs, we could be in
20 problems for accountability.

21 I just think that while we are making recommendations,
22 one of the recommendations ought to be that it is the
23 Secretary of State -- after all, he is in charge of overall
24 foreign policy direction, both overt and covert. He is the
25 better spokesman.

1 Mr. Aaron. I think the important experience we even had
2 here when we went into the question of Angola was that the
3 Director of Central Intelligence is not the person to speak
4 to the policy. They can tell you what they are doing, why
5 they are doing X or Y activity, but when we were to ask, to
6 define our strategic -- when he was asked to define our
7 strategic interest in the area, he really sort of punted.

8 The Chairman. Certainly, and referred to the Secretary
9 of State.

10 I certainly think it denigrates the role of the Secretary
11 of State that he not be that spokesman, and furthermore, I
12 see less problem in making him the spokesman than leaving it
13 up in the air.

14 Senator Schweiker. Frank, the only problem I have with
15 that is doesn't it put him in a rather difficult position to be
16 Secretary of State and also to be accountable to Congress on
17 covert activities?

18 In other words, it just seems to me that that really puts
19 him right in the meatgrinder a little unnecessarily.

20 The Chairman. Well, that's where he ought to be, and that
21 has been part of the problem up until now, the Secretary of
22 State pretending that he has nothing to do with something being
23 operated by the CIA.

24 Senator Schweiker. Well, he can't pretend that
25 anymore.

1 Mr. Aaron. That's right.

2 The Chairman. But we've had this problem in the past, but
3 when it comes right down to it, it is and has to be the
4 Secretary of State that is directing both operations.

5 Senator Baker. Does that affect the Secretary's
6 standing with other countries, and the Secretary's dealings with
7 other countries where the other countries say "We can't
8 deal with him. He's head of the American intelligence
9 community."

10 Mr. Aaron. Well, I think there are two parts. That,
11 as a practical matter, has been known to people for a long time
12 in terms of the President's Secretary, but second, the
13 problem of placing the President's Secretary and not one of
14 his own people on the operations group effectively puts him --
15 he has no deniability either.

16 Senator Baker. Again we have the question of tense.
17 I think that is clearly so now and has been in the past, but
18 is it necessarily desirably so in the future?

19 The Chairman. Well, as long as we recommend that the
20 Secretary go in the group, I think he is the logical and the
21 best man to be accountable, both for the overt and covert
22 policy, as spokesman to the Congress, and I just think it
23 follows, and we ought to say so as a recommendation. That
24 would be my proposed change, so that Item 10 would simply say
25 "By statute, the Secretary of State shall be designated as

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1 the Administration's spokesman to the Congress on the policy and
2 purpose."

3 Senator Baker. Mr. Chairman, I am not sure what I will
4 finally say, but I will reserve whatever rights I have on
5 this.

6 The Chairman. I will modify it to this extent, however.
7 "By statute, the Secretary of State should be designated as
8 the principal Administration spokesman to Congress on the
9 policy and purpose underlying covert action efforts."

10 Do you want to take a vote on that?

11 Senator Baker. You don't need to take a vote. I just
12 want, you know, to take no one by surprise. I am going to think
13 about this more, if I may.

14 The Chairman. All right, if there is no objection to
15 that, then that will be agreed to.

16 Senator Smothers. Mr. Chairman, we have sort of
17 completed the scheme on the operations advisory group. I
18 wonder if I could just raise a quick inquiry on why it is
19 necessary that we include the Director of the Clandestine
20 Service who is on the same committee, on equal footing with
21 his boss.

22 Is there some special thing we are shooting for here
23 that we feel we have to do that with the DCI?

24 Mr. Aaron. Well, I think the thought behind this was
25 that the DCI, having increased managerial responsibilities over

1 the entire community, and having that for the purposes of
2 being able to have an in-depth discussion, to make it clear
3 that the Director of the Clandestine Service fully understands
4 the policy discussions that have taken place.

5 The Chairman. Note the Director can always bring his
6 assistant at any time for the purpose -- I don't think the
7 assistant to the Director ought to be in the group.

8 Senator Schweiker. Well, the only thing is, suppose we
9 have a guy, as we saw here, that didn't believe it is going to
10 work, that was told to do something, get it done, like Chile,
11 and do it, and here you have a belief institutionally that it
12 is a lousy job or what if the guy who is going to be held
13 accountable and is fired for whatever he does, shouldn't
14 be able to tell the group his opinion.

15 Mr. Kirbow. Mr. Chairman, later on we recommend that
16 those differing views be noted to the Committee.

17 The Chairman. Well, the problem I have -- and I think
18 Curt is right on this, we are designating -- look who we are
19 designating for the group: the Secretary of State, the
20 Secretary of Defense, the Assistant to the President for
21 National Security Affairs, the Director of the Central Intelli-
22 gence Agency, and the Attorney General of the United States.
23 And then suddenly we have the Assistant to the Director of the
24 CIA in charge of Clandestine Affairs. He could come anyway,
25 if invited by the Director.

1 Mr. Smothers. He is going to be chopping on mighty high
2 cotton trying to convince these people that he deserves to be
3 there.

4 Mr. Dennin. Walt, I don't know if it was intentional, but
5 the composition of the group differs from the executive
6 order, and it may be unintentional, in that the group, as we
7 include it, does not include the Chief of the Joint Chiefs, which
8 the Presidential order does include.

9 I don't know if that was intentional, but there's a couple
10 of changes we make from the way the order sets it up.

11 Mr. Smothers. I'd be in favor of putting him in.

12 Senator Schweiker. Why don't we put the Joint Chiefs in
13 in there?

14 The Chairman. Put him in there in the place of the
15 Director of Clandestine Services.

16 May I make this suggestion, that we put the Chairman of
17 the Joint Chiefs in place of the Director of Clandestine
18 Services?

19 Howard?

20 Senator Tower. Mr. Chairman, may I digress on another
21 matter for about two minutes, because I have to leave. It is
22 a matter of the press conference at the Agency.

23 We yesterday agreed to send a letter to George Bush. What
24 I am about to say will obviate the necessity for that letter. I
25 have talked to him on the phone. He said, "I have assumed

1 full responsibility for it as any good naval skipper does when
2 his ship runs aground." But the fact of the matter is, he did
3 not know this was going on. He's got his IG working on it.
4 He said, "The IG report is on my desk. I haven't had a chance
5 to look at it. It came in last night. I will send you a full,
6 written report on what happened and why, and the measures we
7 are taking to see that it does not happen again." He said,
8 "We are plainly guilty in this, we made a mistake."

9 So he has already said that.

10 The Chairman. Has he called a press conference to make
11 an announcement?

12 Senator Tower. He said he would tell the press that. Well,
13 he has already told the press: he will take full responsibility.

14 The Chairman. All right.

15 Senator Mondale. But it really is, John, disgusting that
16 we have to get on our knees and beg.

17 Senator Tower. That's precisely what he said. He said
18 the Congress has every right to be miffed about it.

19 Senator Mondale. And then they hustle some PR types in
20 thereand tell them everything.

21 Senator Tower. The point I'm trying to make is he is going
22 to file a full report on it, including the steps he is taking
23 to make sure it doesn't happen again.

24 Senator Huddleston. Where is he going to file the report?

25 Senator Tower. With us.

1 So I just submit that the letter is not necessary.

2 The Chairman. Can we go now?

3 Senator Mondale. That isn't the only thing about that
4 story. It shows how the executive has funds to create the
5 happy life.

6 Senator Huddleston. No, that -- they charged --

7 (Discussion off the record.)

8 The Chairman. We have to be out of here by 12:00 o'clock
9 because we have to move along.

10 Senator Mathias. We have to be out of here in five minutes
11 because there is a vote.

12 The Chairman. Well, let's go to page 16.

13 All right, on page 16, I have a question to raise about
14 Item 16, which I don't understand -- Item No. 11 on page 16.

15 "The Director of Central Intelligence should continue to carry
16 out the notifications required in existing law and answer any
17 questions relating to the covert activity in question. The
18 President also should continue to certify covert actions
19 projects, as provided by the existing statute."

20 Now, we have to decide whether we want to recommend
21 the continuation of the Hughes Act. And I don't know how that
22 is consistent with the recommendations we are making for
23 the establishment of a permanent committee that is going to
24 be the repository of this information and is going to exercise
25 the supervision over this.

1 Senator Baker. Not only that, but I don't see the need
2 for it.

3 The Chairman. And you have perpetuated the chaos up
4 here which really makes it even impossible to keep legitimate
5 secrets.

6 Senator Baker. I think we ought to change it and tell
7 nobody nothing.

8 Mr. Aaron. Can I just clarify something about the para-
9 graph? The paragraph itself is designed simply to continue
10 the procedure that the DCI inform the Congress, that the
11 President certify. Now, the phrase "existing law" could
12 apply to either revision in the current law or the current
13 law.

14 The Chairman. No, it couldn't. Existing law is
15 existing law.

16 Mr. Aaron. The intention was to be neutral as to what
17 the law was except for the procedures that the DCI inform
18 and the President certify.

19 The Chairman. Well, what this is that the Director of
20 Central Intelligence should continue to carry out the notifi-
21 cations required in existing law. Existing law requires that
22 he notify half a dozen committees.

23 Senator Mathias. "Required by law" is what we mean,
24 isn't it, instead of "existing law?"

25 Mr. Smothers. "Existing" is a little superfluous, because

1 if you are going to have "required by statute," which we do
2 in our subsequent recommendations, then why do we need to
3 say that again?

4 Senator Huddleston. Well, in the first place you don't
5 have the statute yet. There is a statute now, and there may
6 not be another. You know, this may not fly, so we don't want
7 to do anything that would indicate that we want to lessen what
8 he is already required to do. If we do impose additional
9 requirements, that will be in whatever statute follows.

10 The Chairman. Well, then, what we should say is --

11 Mr. Smothers. Mr. Chairman, if we are actually calling
12 for a change in existing law, we might cite the objectives
13 being served by existing law, but we ought to come out and
14 say what the new recommendation is, to end that confusion.

15 The Chairman. Well, it is very confusing as it now
16 stands. Maybe the best thing to do would be to strike this
17 entirely.

18 Mr. Inderfurth. Could I mention one thing here?

19 In the President's letter to Congress, he suggested or
20 recommended that his certification of the importance of the
21 national security interest would be knocked out, and so this
22 is addressing that, putting this Committee on record that the
23 certification is important and necessary. He does not want
24 to continue certifying.

25 Mr. Dennin. But he says that as a follow-up sentence to

1 a sentence which says, in this context, "A Congressional
2 requirement to keep the oversight committee fully informed is
3 more desirable and workable as a practical matter than the
4 formal requirements of notification to the six other committees."
5 He says there ought to be.

6 Mr. Inderfurth. Well, that's notification and not
7 certification.

8 Mr. Dennin. Well, in the next sentence it talks about
9 certification.

10 Senator Baker. Well, Mr. Chairman, let me say a word.

11 The Chairman. Yes.

12 Senator Baker. As I said a minute ago, I think this is
13 another key and central issue. I think in our recommendations
14 you just have to face up to some hard facts: do you intend
15 to keep these six committees on line, or are you going to
16 repeal the Hughes-Ryan Amendment? We haven't spoken to that.
17 I personally think you are either going to have to repeal it
18 or amend it so that you only report to the oversight
19 committee.

20 I have been told just now that there are someplace between
21 120 and 130 members of the House that are entitled to a
22 briefing under the Hughes-Ryan Amendment, and 50 Senators,
23 plus whatever staff they choose to bring with them.

24 Now, I think if we don't do anything else, we have got
25 to decide to centralize that responsibility. So I think we

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ought to strike this out, as you suggest, and I think later on we ought to consider whether or not we recommend an amendment to the Hughes-Ryan.

Senator Schweiker. Does the new bill out of Government Ops deal with this issue at all?

Mr. Schwarz. It is only a resolution.

The Chairman. It is only a resolution. It does establish the jurisdiction that the Senate can, but it is not a statute.

Mr. Kirbow. It recommends only that there be a subsequent revision of the Hughes-Ryan Amendment.

The Chairman. Well, I think we should be consistent, because the Government Ops came out with a bill that is very close to the bill that we originally recommended.

Senator Baker. And I think a very good one.

The Chairman. I think it is a very good one, too.

Mr. Kirbow. May I suggest that we strike 11 and substitute new wording and bring it back to the Committee?

Senator Huddleston. Now, just one other point. I think it is probably not all that important that it stay in there, but if you read 10 where we designate the chairman of the group as a spokesman, one thing that we wanted to do was, having done that, we didn't want to imply that the DCI was in any way relieved of his continuing responsibility, because the law is there and he is responsible under that law, and it in effect does not have to be said.

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1 The Chairman. It doesn't have to be said, but as long
2 as the law is there -- but I think this in effect endorses
3 the continuation of the present Hughes-Act. [It is incon-
4 sistent with the position that we have taken on an oversight
5 Committee, and is inconsistent with the recommendations made
6 by the Government Operations Committee.]

7 Senator Schweiker. Well, the certification and notifica-
8 tion principle is not. I think we are talking two different
9 things here, and I hate to see us give up the one element of
10 control we have, certification and notification. So if we
11 are going to take something out, take out the number context,
12 but I'm not sure we ought to be taking out certification and
13 notification, because if nothing else passes Congress, that's
14 all you have.

15 Senator Baker. Well, I think that is true, but I think
16 that you ought to have both the certification and the
17 notification at a single point of responsibility, not to
18 six of them.

19 Senator Mondale. Well, Howard, the problem here is it
20 seems to me here is to existing. If you just say the DCI
21 should continue to carry out notification required by law,
22 and answer any question, and the President shall also
23 continue to certify that covert, you know, as required by law,
24 and then if the law is changed, it is changed, but the notifi-
25 cation, the certification and notification point would be

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1 constant, it seems to me, the question about which committees, or
2 if only a single committee is going to be required to be
3 notified, it could be handled elsewhere without in any way
4 changing --

5 Senator Schweiker. If the law is changed, it won't be
6 inconsistent.

7 Senator Mondale. By using the word "existing", we are
8 getting into trouble.

9 Senator Baker. Well, my problem, Mr. Chairman, is we
10 ought to just bite the bullet and say the law ought to be
11 changed, and that certification and notification ought to be
12 in our proposed oversight committee.

13 The Chairman. Well, we can do that in the covert action
14 part of the report later on.

15 But for purposes of this particular provision, would it be
16 cured by just striking the word "existing" in both places?

17 Mr. Smothers. Doesn't 14 address the problem, Mr. Chairman?

18 The Chairman. Well, let's look at 14.

19 Mr. Kirbow. 14 says we require prior notice, we require
20 certification by the President and a semi-annual report of all
21 these things anyway.

22 The Chairman. Well, maybe it does. Look at 14. "Existing
23 procedures for notifying the appropriate Congressional
24 committees should be continued, except that Congress should be
25 notified prior to the initiation of such a covert" -- "Congress,

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1 what does that mean?

2 Senator Huddleston. We took it to mean the oversight
3 committee.

4 The Chairman. We think that the oversight committee instead
5 of Congress. After all, these are recommendations. "Existing
6 procedures for notifying the appropriate Congressional
7 committee should be continued, except that by statute" --

8 Senator Mondale. --"such notice" --

9 The Chairman. Except that the first sentence endorses the
10 Hughes Act, in 14.

11 Mr. Kirbow. You say "appropriate" only. You still have
12 to amend the Foreign Service Act.

13 Senator Huddleston. Well, there again you can take
14 the word "existing" out and you are all right. "Procedures
15 for notifying the appropriate Congressional committees should
16 be continued."

17 Senator Baker. Mr. Chairman, I would like to reserve my
18 rights on this one.

19 Mr. Aaron. Could I suggest, Mr. Chairman, that while
20 you are voting we try to draft something that keeps the
21 principle of certification and notification, but does not
22 do so in the context of reaffirming one way or the other?

23 Senator Schweiker. That's what we ought to do.

24 The Chairman. Why don't we revise, take 11 and 14,
25 combine them together with the following objectives: one, to

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1 maintain the requirement of notification and certification; and
2 two, to recommend that that information be given to a permanent
3 oversight committee in lieu of the present provisions of the law
4 that require that it be given to six different committees.

5 Senator Huddleston. Let me suggest one point further, if
6 they have time. There are a number of instances in here
7 where we refer to Congress being notified, and I'm wondering
8 whether that ought to be changed to "the oversight committee."

9 The Chairman. Yes.

10 Senator Huddleston. If that is not inconsistent with
11 what we are saying.

12 The Chairman. Does the staff have that?

13 Senator Baker. I think, Mr. Chairman, I think that is
14 a substantial, even a vast improvement. I generally agree
15 with that, and I probably will have some additional comment
16 to make on that, but I fully support the proposal.

17 The Chairman. All right.

18 Mr. Miller. David, how does that read?

19 Mr. Aaron. Well, I don't know how it will read. We will
20 read it when we come back from the vote.

21 The Chairman. We cannot come back. We'll have to go
22 over it at 10:00 o'clock tomorrow morning, and then will
23 you bring back a revision of these two provisions?

24 Mr. Aaron. Yes.

25 The Chairman. And we will take up on page 16

1 tomorrow morning.

2 (Whereupon, at 11:50 o'clock a.m., the Committee recessed
3 to reconvene at 10:00 o'clock a.m., Thursday, March 18,
4 1976.)

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